

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 14,102

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Appeal of)

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INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying his application for Medicaid. The issue is whether the petitioner is disabled within the meaning of the pertinent regulations.

FINDINGS OF FACT

1. The petitioner is a forty-year-old man who has an eleventh grade education. He has spent most of his working career as a janitor, a job which the Disability Determination Service agrees he is no longer capable of performing.
2. The petitioner has been receiving regular treatment over the past year for chronic low back pain. X-rays taken of his spine show that he has a bulging disc or minimal herniated nucleus pulposus of the lumbar spine. His physicians have restricted him from heavy lifting, bending or twisting due to his herniated disc. He experiences acute and chronic pain every day which is only slightly relieved by prescription pain medications.
3. The petitioner has also been diagnosed as alcohol dependent, a condition which has been exacerbated because of his tendency to use alcohol for relief of his pain. He has had many legal difficulties because of his substance abuse and has had his license to drive suspended and, within the last year, has been cited for assault related to his alcohol use. The petitioner has referred himself to alcohol counseling over the last year in an attempt to become sober and "find a job he can handle." However, his long history of substance abuse coupled with some severe psychological stressors makes it very difficult for him to satisfactorily control this problem which seriously interferes with his ability to train or obtain employment. He has been in treatment for seven months at this writing but has not stayed sober for more than a few weeks at a time.
4. Since November of 1995, the petitioner has been a client of the state vocational rehabilitation program. As part of that program, he has received an extensive work up, including a detailed

psychological examination. Testing done by vocational rehabilitation counselors shows that the petitioner has communication skills below a fifth grade level, limited spelling and math skills, poor judgment, difficulty initiating and following through with activities, antisocial behavior, poor peer relationships and frequent inappropriate behavior. These deficits have compromised his interpersonal and communication skills, his self-care, his work tolerance, and his self-direction. He was judged by the Vocational Rehabilitation division to have substantial impediments to employment based on these problems and on his alcoholism.

5. A detailed psychological examination done on the petitioner in December of 1995 concluded that he had a verbal IQ of 72, which placed him in the borderline range of intellectual functioning as well as a performance level IQ of 92 which is in the average range, resulting in a full scale IQ of 81 which is low average for the population. The gross disparity in the verbal and performance IQs suggested a language based learning disability. He was noted to have particularly low abilities in reading and math. Severe deficits in verbal reasoning, attention, concentration, short-term memory and fund of knowledge were noted.

The petitioner was also judged to have chronic depression marked by slow motor movements, a flat affect, suicidal ideation and anger, as well as severe alcohol dependence, generalized anxiety and an antisocial personality disorder. In combination, these deficits interfered significantly with his social, occupational and daily functioning. The psychologist recommended the following to the vocational rehabilitation department

In terms of vocational planning it is recommended that [petitioner] be encouraged to explore his vocational interests, and obtain further job training. However, given his language-based learning disability--his deficits in verbal reasoning, attention, concentration, short-term memory; and his relative strengths in non-verbal reasoning and problem-solving--he will need special accommodations during training and employment. Supervisors will need to demonstrate a task, as well as give verbal instructions, in order to capitalize on [petitioner's] relative strength in non-verbal reasoning and compensate for his deficits in verbal reasoning. Supervisors may also need to repeat verbal instructions and demonstrations in order to compensate for his attention and concentration deficits . In addition, supervisors will need to monitor him regularly in order to insure a consistent rate of work. Vocational options to consider might be light manual labor jobs such as janitorial work or assembly line work in a factory. Although he has physical limitations, this man may still be able to succeed in this type of job. In the past, he has enjoyed such jobs, and it is likely that he would be most suited for this type of work.

This report is accepted as reflective of the

petitioner's psychological condition and work limitations.

6. The petitioner has left both of his last two janitorial jobs due to "nerves, temper, disagreements with co-workers and constant pain in his back." He has recently developed a problem with his right wrist which may be carpal tunnel syndrome. He has also developed shoulder and neck pain on his right side and gets headaches every day, probably due to the effects of alcohol. He acknowledges that alcohol is a problem for him and continues to seek treatment but with little success. He also continues in mental health counseling and takes medication for depression which helps him to sleep. However, he is still weak, tired, unmotivated and weepy.

ORDER

The decision of the Department is reversed.

REASONS

Medicaid Manual Section M211.2 defines disability as follows:

Disability is the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, or combination of impairments, which can be expected to result in death or has lasted or can be expected to last for a continuous period of not fewer than twelve (12) months. To meet this definition, the applicant must have a severe impairment, which makes him/her unable to do his/her previous work or any other substantial gainful activity which exists in the national economy. To determine whether the client is able to do any other work, the client's residual functional capacity, age, education, and work experience is considered.

The medical evidence indicates that, due to a combination of impairments, the patient is unable to perform substantial gainful activity in a regular work-like setting and has been unable to do so for at least two years. His condition is thus equal to the severity and duration required in the listings of impairments⁽¹⁾ and entitles him to a finding of disability. 20 C.F.R. § 416.926. The petitioner is commended for seeking treatment for his disorders and is reminded that continuing prescribed treatment, particularly for his alcoholism, is a condition for his continued Medicaid eligibility. 20 C.F.R. §§ 416.936 and 416.930.

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1. The petitioner's condition most resembles that of substance addiction disorders as evaluated under the criteria for depressive syndrome and personality disorders. See 20 C.F.R. § 404, Subpart P, Appendix 1, Rules 12.09, 12.04 and 12.08.